

APPEAL NO. 041122
FILED JULY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 14, 2004. The hearing officer determined that the appellant's (claimant) compensable injury of _____, "does not include injuries to the bilateral shoulders" and that the claimant did not have disability as defined in Section 401.011(16).

The claimant appeals, contending that some of the hearing officer's determinations are inconsistent and the medical evidence supports his position. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant worked in a hat plant and on _____, sustained a compensable injury when he slipped while carrying some boxes. The claimant initially reported low back pain and pain between his shoulders. The claimant continued to work his regular job. The claimant went to a hospital emergency room on December 16, 2002, was treated and referred to Dr. D. Dr. D referred the claimant out for further treatment. The carrier accepted a right shoulder sprain. In evidence are Work Status Reports (TWCC-73) releasing the claimant to work without restrictions (the claimant had continued to work his regular duties) on January 24, 2003, by Dr. D, on February 24, 2003, by a referral doctor, and again on February 24, 2003, by the referral doctor. It is undisputed that the claimant was involved in a "very severe" motor vehicle accident (MVA) on March 27, 2003, and that the claimant was eventually diagnosed with two broken ribs and other injuries. The claimant apparently returned to work at some point, but was laid off in a reduction of force on June 25, 2003. In an August 1, 2003, progress note another referral doctor assesses bilateral shoulder injuries and diagnoses a right shoulder rotator cuff tear (and possible left shoulder rotator cuff tear) without any reference to the March 2003 MVA. The hearing officer noted that the claimant's "bilateral shoulder pain did not develop until after his job ended in June 2003." The hearing officer determined that the claimant's compensable right shoulder injury "resolved by early February 2003."

We find no inconsistencies in the hearing officer's determinations. Fairly clearly the hearing officer determined that while the claimant had a compensable right shoulder injury, that injury had resolved by early February and the claimant's "present bilateral shoulder problems" were caused by something other than the compensable December 2002 injury.

The questions of extent of injury, and whether the claimant had disability, presented questions of fact for the hearing officer to resolve. The hearing officer is the

sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PENNSYLVANIA MANUFACTURERS ASSOCIATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge